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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/324,253	06/02/1999	JERRY C. CHEN	0050.1610-000	1283
30407	7590	01/26/2005	EXAMINER	
BOWDITCH & DEWEY, LLP 161 WORCESTER ROAD P.O. BOX 9320 FRAMINGHAM, MA 01701-9320			PAYNE, DAVID C	
			ART UNIT	PAPER NUMBER
			2633	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TB

Office Action Summary	Application No.	Applicant(s)
	09/324,253	CHEN, JERRY C.
	Examiner	Art Unit
	David C. Payne	2633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 September 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 3-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 1 and 3-34 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 September 2004 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

Election/Restrictions

1. Based upon the applicant's explanation of Figure 6A and Figure 7 it appears that the applicant's characterization as all claims falling into one species both places a burden on the examiner given that multiple independent types of filters are embodied in (Figures 6B, 6C, 11A, and 11 B) used in different types of networks (12C-E, 13A-D, and 14A-B) encompassing at least the following classes 398/59, 398/60, 398/66, 398/63, 398/86, 398/87, 398/88, and 398/103. Therefore the following election/restriction is necessary.
2. Furthermore, if Figure 7 is a specific type of modulator (attenuator), it does not appear that it can function within any of the specific filter embodiments of Figure 6B, Figure 6C, Figure 11A or Figure 11B, given that Figure 7 has a single waveguide entering and exiting the device which does not conform to either the free space arrangements or multi-waveguide filters of the aforementioned embodiments. Any alternative modulators are subject to a restriction requirement.
3. In addition, any alternative modulators other than Figure 7 have not been illustrated and could be subject to 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, any alternative modulators must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

4. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species 1) figure 12C,

Subspecies A-D are drawn toward a frequency dependent disperser

Subspecies A) figure 6B,

Subspecies B) figure 6C,

Subspecies C) figure 11A,

Subspecies D) figure 11B,

Species 2) figure 12D,

Subspecies A-D are drawn toward a frequency dependent disperser

Subspecies A) figure 6B,

Subspecies B) figure 6C,

Subspecies C) figure 11A,

Subspecies D) figure 11B,

Species 3) figure 12E,

Subspecies A-D are drawn toward a frequency dependent disperser

Subspecies A) figure 6B,

Subspecies B) figure 6C,

Subspecies C) figure 11A,

Subspecies D) figure 11B,

Species 4) figure 13A,

Subspecies A-D are drawn toward a frequency dependent disperser

Subspecies A) figure 6B,

Subspecies B) figure 6C,

Subspecies C) figure 11A,

Subspecies D) figure 11B,

Species 5) figure 13B,

Subspecies A-D are drawn toward a frequency dependent disperser

Subspecies A) figure 6B,

Subspecies B) figure 6C,

Subspecies C) figure 11A,

Subspecies D) figure 11B,

Species 6) figure 13C,

Subspecies A-D are drawn toward a frequency dependent disperser

Subspecies A) figure 6B,

Subspecies B) figure 6C,

Subspecies C) figure 11A,

Subspecies D) figure 11B,

Species 7) figure 13D,

Subspecies A-D are drawn toward a frequency dependent disperser

Subspecies A) figure 6B,

Subspecies B) figure 6C,

Subspecies C) figure 11A,

Subspecies D) figure 11B,

Species 8) figure 14A,

Subspecies A-D are drawn toward a frequency dependent disperser

Subspecies A) figure 6B,

Subspecies B) figure 6C,

Subspecies C) figure 11A,

Subspecies D) figure 11B,

Species 9) figure 14B

Subspecies A-D are drawn toward a frequency dependent disperser

Subspecies A) figure 6B,

Subspecies B) figure 6C,

Subspecies C) figure 11A,

Subspecies D) figure 11B,

5. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species and subspecies for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there are no generic claims.

As an example the applicant must select a species/ subspecies combination such as Species 1, Subspecies A.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either

instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Payne whose telephone number is (571) 272-3024. The examiner can normally be reached on M-F, 7a-4p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dcp



David C. Payne
Patent Examiner
AU 2633